

ACTS

OF THE

LEGISLATURE

FOR

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Leveeing, Draining and Reclaiming

SWAMP LANDS

IN CERTAIN PORTIONS OF THE

Parishes of Orleans and Jefferson,

WITH THE

OPINION OF C. ROSELIUS, ESQ.

NEW ORLEANS:

PRINTED AT THE BULLETIN BOOK AND JOB OFFICE.

1859.

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AN ACT

TO PROVIDE FOR LEVEEING, DRAINING AND RECLAIM-
ING SWAMP LANDS IN CERTAIN PORTIONS OF THE
PARISHES OF ORLEANS AND JEFFERSON.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That for the purposes of this Act, all that portion of the parish of Orleans lying and being within the following limits, viz: beginning at the Mississippi River at Julia street, following said street to the Canal of the New Orleans Canal and Banking Company, following said Canal as far as Lake Pontchartrain, along said Lake to Bayou St. John, following said Bayou to the Canal Carondelet, along said canal to St. Peter street, along St. Peter street to the river, following the banks of the river to the starting point, shall constitute the First Leveeing and Draining District.

2. That the following portions of the parishes of Orleans and Jefferson, viz: beginning at the Mississippi River at the upper side of Julia street, along Julia street to Mobile Landing, along said Landing to Delord street, along Delord street and the upper side of the Canal of the New Orleans Canal and Banking Company, following said canal to Lake Pontchartrain, along the shores of said lake to the Jefferson and Pontchartrain Railroad, following said road to the river Mississippi, and following the banks of said river to the

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starting point, shall constitute the Second Leveeing and Draining District.

3. And all that portion of the parish of Orleans lying and being within the following limits, viz : from the river Mississippi, at St. Peter street, along the lower side of said street to Canal Carondelet, following said canal to Bayou St. John, along said bayou to Lake Pontchartrain, along the shores of said lake to Lafayette Avenue, following said avenue to the River Mississippi, along the banks of said river to the starting point, shall constitute the Third Leveeing and Draining District.

SEC. 2. *Be it further enacted, etc.,* That for the purpose of carrying into effect the provisions of this Act, there shall be *three Boards of Commissioners*, to be appointed and organized as follows : One to be designated and known as the *Board of Commissioners of the First Draining District* ; one as the *Board of Commissioners of the Second Draining District* ; and one as the *Board of Commissioners of the Third Draining District*. Each Board of Commissioners shall be composed of five persons, residents of the district for which they are appointed. The Board of Commissioners of the *First and Third Draining Districts* shall be appointed by the Mayor of the city of New Orleans, by and with the advice and consent of the Board of Aldermen of said city ; and the Board of Commissioners of the *Second Draining District* shall be composed of five persons, residents of the said district, to be appointed as follows, viz : *two* by the Mayor of the city of New Orleans, by and with the advice and consent of the Board of Aldermen of the city ; *one* by the Council of the city of Jefferson ; *one* by the Police Jury of the parish of Jefferson ; and *one* by the Council of the town of Carrollton.

Said Commissioners shall serve for the term of four years. *And no member of the Common Council of the city of New Orleans, of the Police Jury of the Parish of Jefferson, or of the Councils of the city of Jefferson and town of Carrollton, shall, during the term for which they shall have been elected, be eligible as Commissioners in either of the districts aforesaid.*

SEC. 3. *Be it further enacted, etc.,* That at the first meeting of the Boards of Commissioners of the First and Third Draining Districts, the said Boards shall be divided by lot into two classes. The seats of the first class shall be vacated at the end of two years, and the seats of the second class shall be vacated at the end of four years; *Provided,* That three members shall constitute the first class, and two members shall constitute the second class, and that every two years thereafter the Mayor, as aforesaid, shall appoint, as hereinbefore provided, Commissioners to fill the vacancies in each Board whose term may have expired. And in case of vacancy by death, resignation, or otherwise, the Mayor shall appoint, in the same manner as hereinbefore provided, Commissioners to fill the vacancies of the unexpired term. It being understood that the Board of Commissioners for the Second Draining District shall serve for the full term of four years, and in case of vacancy by death, resignation, or otherwise, in said Board, such vacancy shall be filled by the authority making the original appointment.

SEC. 4. *Be it further enacted, etc.,* That the said Boards of Commissioners are hereby invested with all the rights and powers necessary to thoroughly drain the several Draining Districts, as expressed in the First Section of this Act, and to that end shall have the right at all times, of entering on

the lands within the limits of the districts aforesaid, and of placing thereon their engines and machinery, and of freely passing over and using the same, and of digging all necessary canals and drains, making all necessary embankments and levees, and of doing all things lawful to be done, which may be useful or necessary in draining, cleaning, and reclaiming the land within said districts. Said Boards of Commissioners are authorised to cut their canals and drains through the streets and squares; and in the event of any street selected for the location of a canal being too narrow for a draining canal and a public highway, the said Boards of Commissioners may cause such streets to be widened; *Provided*, however, that any person or corporation shall have the right by petition addressed to any Court of competent jurisdiction, to oppose any acts of the Boards, in the exercise of the powers conferred by this Section on said Boards, and it shall be the duty of such Court summarily to hear and determine the same, after a full hearing of both parties, and such Courts shall limit the action of the Board to the exercise of the powers herein conferred, in carrying into effect the provisions of this Act according to its true intent and meaning, and when the same cannot be done without injury or loss to the complainant, said Court shall award adequate compensation; And, *Provided also*, that on appeal to the Supreme Court, the trial of the same shall have priority and preference over all other cases therein; and on such appeals the said Boards shall only be required to give security for costs of appeals; And, *Provided further*, that in any such suit, nothing herein contained shall prevent said Boards from recovering judgment against any such complainant or complainants for damages, where it can be shown that such have been incurred, and that such suit or suits were brought on frivolous grounds or from improper motives.

SEC. 5. *Be it further enacted, etc.,* That said Boards shall each have the right to sue and be sued, to contract for works necessary to be done under this Act; to have a seal and to alter the same, to accept and to receive any gift, legacy or donation that may be made or left in their favor, and generally to do all that may be convenient or necessary for the performance of the duties which are imposed upon them, or that may be requisite for the welfare or success of the plan of operations which are confided to them by this Act, but not beyond the powers herein conferred.

SEC. 6. *Be it further enacted, etc.,* That the domicil of the said Boards of Commissioners shall be located in the city of New Orleans. Each Board shall organize within fifteen days after their appointment, or as soon thereafter as practicable, and shall appoint one of their number as President, on whom legal service of all process or citation against such Board shall be made. Each Board of Commissioners is hereby empowered and authorized to appoint such officers, and to make such by-laws, rules and regulations for their own government as they may see fit, and from time to time to change the same, under such restrictions as they may think proper to impose.

SEC. 7. *Be it further enacted, etc.,* That said Boards of Commissioners shall have the right to proceed, and are hereby empowered to levee, drain and reclaim the lands embraced within their respective draining sections or districts, as established by this Act in the following manner: whenever either of said Boards of Commissioners is prepared to drain their respective section or district, such Board of Commissioners shall cause a plan thereof to be

made, accurately designating the limits of the section or district to be drained, and, as far as possible, the subdivision of the property therein contained, and the names of the proprietors, as also the dimensions and directions of the canals intended to be dug, and the place where the steam engines will be established. Such plan or plans shall be deposited in the office of the Recorder of Mortgages of the parish in which the section or district to be drained is situated, and notices shall be inserted, in French and English, in two newspapers published in the said city of New Orleans, at least once a week during four weeks in succession, announcing that such Board of Commissioners will proceed to drain such section, describing the place where the plan thereof is deposited, accurately defining the limits thereof, and indicating, as nearly as possible, the time within which the draining thereof will be completed, and the probable cost of said works. After such publications such Board of Commissioners shall apply by petition to one of the District Courts in the parish of Orleans, for that portion of the section or district lying within the limits of said parish, and to the District Court in the parish of Jefferson, for that portion of the section or district lying within said parish; which Court or Courts, upon due proof being made of the publications of said notices aforesaid, shall decree that each portion of the property situated within the said limits is subject to a first mortgage, lien, and privilege in favor of such Board of Commissioners, for such amount as may be assessed upon such property for its proportion of the costs of draining such section or district, and interest thereon at six per centum per annum from demand thereof. The decree of the District Court in the parish of Orleans shall be recorded in the office of the Recorder of Mortgages in and

for said parish, and the decree of the District Court of the parish of Jefferson shall be recorded in the office of the Parish Recorder of said parish, and a certified copy of the aforesaid plan or plans shall also be deposited in each of said offices, for the information of said Recorders. Said Recorders shall be entitled to twenty dollars each for the recording of the said decree and the deposit of said plan or plans; and in case they be required by said Boards of Commissioners to record the said decree in the name of any or all of the proprietors of real property within said section or district, they shall be entitled to receive fifty cents for such special recording; and whenever the said Recorders, or either of them, may be required to deliver a certificate of mortgages on any real property embraced within said draining section or district, such Recorder shall mention therein that such property is subject to a lien, privilege and first mortgage in favor of the Board of Commissioners of the section or district in which such property is situate, for such sum of money as may be assessed on such property for the draining thereof. Said lien, privilege and first mortgage shall take precedence over all mortgages, liens and privileges whatsoever, whether tacit, conventional, legal or judicial, and shall attach to said property until the amount assessed and the interest thereon shall have been paid in full.

SEC. 8. *Be it further enacted, etc.,* That said Boards of Commissioners, each within its own section or district, shall have the right, and are hereby authorized and empowered to levy such uniform assessment or assessments upon the superficial square-foot of lands situate within the draining section or district of such Board, to defray the construction

of the levees, machinery canals and other works necessary for the purpose of carrying out the provisions of this Act, as applicable to its particular district, which shall be collected from time to time, as the wants of such Board or Boards of Commissioners may require; *Provided*, however, that the same shall not in the aggregate, for any one district, exceed the sum of Three Hundred and Fifty Thousand Dollars; and *Provided further*, not more than one half of said amount shall be demandable within two years after the passage of this Act.

SEC. 9. *Be it further enacted, etc.*, That on non-payment of the amount of the assessment, judgment therefor shall be recoverable before any Court of competent jurisdiction, and the land so assessed shall be sold according to law, and each Board are hereby authorized to purchase the same, and shall hold or dispose of the same for the benefit of such draining district; *Provided*, that the sale thereof shall be made at public auction after thirty days' notice, by three advertisements in some newspaper published in such district; and *Provided further*, that the price of such sale shall fully cover the amount of the judgment, with all costs and interest up to the time of purchase by such draining district, with six per cent. per annum interest upon the aggregate so formed, from that time until its extinction, by the Board, and if, while the property of the draining district, such property would have become liable to any further assessment, the sale shall also cover the amount thereof.

SEC. 10. *Be it further enacted, etc.*, That no compensation shall be allowed to said Commissioners for their services; but they shall have the right to appoint and employ such

officers and employees as they may deem proper, and fix their salaries or compensations; and said Commissioners shall make annual reports of all their operations under this Act to the Common Council of the city of New Orleans, and as often as required so to do by said Council.

SEC. 11. *Be it further enacted etc.*, That the sum of eighty-one thousand dollars be and the same is hereby appropriated out of the Swamp Land Fund of the First Swamp Land District of this State, to aid in carrying out the object of this Act. The sum so appropriated shall be equally divided among the said draining sections or districts as fixed by this Act, and in proportion to the area of each district to be drained.

SEC. 12. *Be it further enacted, etc.*, That the Legislature reserves the right of repealing, altering, changing or modifying this Act.

SEC. 13. *Be it further enacted, etc.*, That this Act shall take effect and be in full force from and after its passage, and that all laws or parts of laws contrary to, or in anywise conflicting with the provisions of this Act, be and the same are hereby repealed.

W. W. PUGH,
Speaker of the House of Representatives.

C. H. MOUTON,
President of the Senate.

Approved, March 18, 1858.

ROBT. C. WICKLIFFE,
Governor.

AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT TO PROVIDE FOR LEVEEING, DRAINING AND RECLAIMING SWAMP LANDS IN CERTAIN PORTIONS OF THE PARISHES OF ORLEANS AND JEFFERSON," APPROVED MARCH THE EIGHTEENTH, EIGHTEEN HUNDRED AND FIFTY-EIGHT.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened:* That in order to enable the several Boards of Commissioners created under and by virtue of the act entitled "An Act to provide for leveeing, draining and reclaiming Swamp lands in certain portions of the parishes of Orleans and Jefferson," approved March the eighteenth, eighteen hundred and fifty-eight, to carry into effect and to commence immediately the works therein contemplated, *each* of said Boards of Commissioners be, and are hereby, authorized and empowered to issue bonds of the sum of five hundred dollars each, having not more than thirty years to run, and bearing interest not exceeding eight per cent. per annum; the said bonds shall be designated as "draining bonds," and shall be signed by the President and countersigned by the Secretary of the Board of Commissioners issuing them: *Provided*, that the total amount of bonds so issued shall not,

for any one draining section or district, exceed the sum of three hundred and fifty thousand dollars. —

SEC. 2. *Be it further enacted, etc.,* That it shall be the duty of the Boards of Commissioners aforesaid, upon issuing draining bonds, as authorized by the first section of this act, to fix and determine the amount of assessment to be levied upon the superficial or square foot of land situate within the draining district or section of such Board or Boards, in conformity with the provisions of the aforerecited act, entitled “An Act to provide for leveeing, draining and reclaiming Swamp Lands in certain portions of the parishes of Orleans and Jefferson,” approved March the eighteenth, eighteen hundred and fifty-eight, and fix and apportion the amount to be paid *yearly*, by the owner or owners of said lands, in order to pay the annual interest on said bonds, and such bonds as may mature: *Provided*, that the amount of assessment, demandable and collectable yearly, shall not exceed in the aggregate more than one-tenth of such assessment.

SEC. 3. *Be it further enacted, etc.,* That it shall be the duty of each of said Boards of Commissioners daily, upon receipt of any sum or sums of money in payment of any assessment levied as aforesaid, to deposit the same with the “Fiscal Agent” of the city of New Orleans, to the credit of the draining fund of its section or district, and the amount or amounts so deposited with said Fiscal Agent, as a special fund for the payment of the annual interest on said draining bonds, and the redemption of said bonds at maturity, and shall only be drawn therefrom to pay said annual interest or redeem said bonds, or for the purpose of

purchasing bonds, as hereinafter provided: *Provided*, That no portion of said fund shall be drawn except by virtue of a resolution of the Board of Commissioners depositing the same, and for the purposes aforesaid.

SEC. 4. *Be it further enacted, etc.*, That whenever, after the payment of the annual interest on said bonds, and of such bonds as have matured, the amount remaining with said Fiscal Agent to the credit of the draining fund aforesaid, of either of said draining sections or districts, shall exceed the sum of ten thousand dollars, it shall be the duty of the Board of Commissioners of such section or district to advertise during thirty days, in the official journal of the city of New Orleans, for sealed proposals for the sale to said Board of such of the draining bonds thereof, having the shortest period to run, and amounting to the sum so remaining on deposit as aforesaid; and at the expiration of said publication said Board of Commissioners shall open said sealed proposals and accept the lowest bid or bids: *Provided*, that no bid shall be accepted which demands more than the face of the bond.

SEC. 5. *Be it further enacted, etc.*, That after the completion of the works for the leveeing, draining and reclaiming of either of the draining sections or districts aforesaid, the Boards of Commissioners thereof shall annually make an estimate of the amount required to keep up and maintain the said works and continue the drainage thereof, and shall furnish the said estimate to the Common Council of the city of New Orleans, for that portion lying within the limits of said city and to the Police Jury of the parish of Jefferson for that portion lying within the limits of the parish of Jef-

person; and it shall be the duty of the said Common Council and the said Police Jury, respectively, to levy a uniform tax or assessment upon the superficial or square foot of the lands situated within said draining sections or districts, respectively, sufficient to meet the amounts respectively required, and the tax or assessment so levied shall be collected in the same manner as the city and parish taxes, and paid unto the respective Boards of Commissioners, who shall disburse and account for the same.

SEC. 6. *Be it further enacted, etc.,* That it shall be the duty of each of said Boards of Commissioners, in the month of January of each year, to make a full and complete report to the Common Council of the city of New Orleans and the Police Jury of the parish of Jefferson, respectively, showing what works have been made or may be in progress, the condition and costs thereof; what bonds have been issued, and the amount derived therefrom; the disposition thereof; what amounts from assessments have been paid; the condition of the trust fund, and generally all such other information as may be required or be of interest.

SEC. 7. *Be it further enacted, etc.,* That the bonds which may be issued by either of said Board of Commissioners, by virtue of this act, shall be exempt from any and all taxation in whose hands the same may be found.

SEC. 8. *Be it further enacted, etc.,* That the said Boards of Commissioners shall have at all times access to and the right of copying, or causing to be copied, any plan or parts of plans of the city of New Orleans and the parish of Jefferson, in the possession or keeping of the Common Council

of the said city of New Orleans or of the parochial authorities, or of any Surveyor or other officer thereof, to be certified by such custodian to be a correct copy or copies thereof, and the same to include the street or streets, roads or highways of any portion or section thereof to be drained, according to the provisions of this act and of the act to which this act is supplementary.

SEC. 9. *Be it further enacted, etc.*, That this act shall take effect and be in full force from and after its passage.

[Signed] WM. W. PUGH,
Speaker of the House of Representatives.

[Signed] WM. F. GRIFFIN,
President of the Senate.

Approved March 17, 1859.

[Signed] ROBT. C. WICKLIFFE,
Governor of the State of Louisiana.

OFFICE OF THE SECRETARY OF STATE.

I hereby certify the foregoing to be a true and correct copy of the original Act, deposited in this office.

{ L. S. } Given under my hand and the seal of State,
this first day of April, A. D. 1859.

A. DUPLANTIER,
Assistant Secretary of State.

AN ACT

TO AUTHORIZE THE BOARD OF COMMISSIONERS OF THE SECOND DRAINING DISTRICT TO ENTER INTO A CONTRACT WITH THE CITIES OF NEW ORLEANS AND JEFFERSON, FOR THE BUILDING OF A PROTECTION LEVEE.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened:* That the Board of Commissioners of the Second Draining District be and the same is hereby authorized and empowered to enter into a contract for the building of a protection levee, with the cities of New Orleans and Jefferson.

SEC. 2. *Be it further enacted, etc.,* That this law be in force from and after its passage.

[Signed]

WM. W. PUGH,

Speaker of the House of Representatives.

[Signed]

WM. F. GRIFFIN,

President of the Senate.

Approved, March 14th, 1859.

[Signed]

ROBT. C. WICKLIFFE,

Governor of the State of Louisiana.

OFFICE OF THE SECRETARY OF STATE.

I hereby certify the foregoing to be a true and correct copy of the original Act, deposited in this office.

{ L. S. }

Given under my hand and the seal of the State,
this first day of April, A. D. 1859.

A. DUPLANTIER,
Assistant Secretary of State.

NEW ORLEANS, April 9th, 1859.

JOHN U. LAVILLEBEUVRE, Esq. :

Dear Sir—You requested me to give you my professional opinion in relation to the character and validity of the Draining Bonds to be issued in virtue of the act approved on the 17th of March, 1859.

By this law the Board of Commissioners of the different draining districts are authorized to issue bonds of the sum of five hundred dollars each, having not more than thirty years to run, and bearing interest at a rate not exceeding eight per cent. per annum. For the purpose of meeting the punctual payment of the interest and capital of the bonds thus issued, an adequate assessment is to be imposed on the whole property within the limits of the respective draining districts, as defined by law, to be collected in annual instalments, and a special lien is created to secure the payment of the assessment. The money thus collected constitutes a sinking fund for the payment of the interest and the gradual extinguishment of the capital of the bonds. It is thus seen that those who invest their funds in the purchase of these bonds will have the same security as the holders of bonds issued by the Commissioners of the Consolidated Debt of the city of New Orleans. Indeed, I consider an investment in these bonds as safe and secure as any bonds in the market. As regards any constitutional objections that may be urged against the laws of 1858 and 1859, they have been so thoroughly examined by the Supreme Court in the case of the New Orleans Draining Company (11 An. Rep., p. 338) that these questions cannot now be considered as open for discussion.

I am very respectfully your obedient servant,

C. ROSELIUS.